

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TATIANA KOROLSHTEYN, on behalf of herself and all others similarly situated,

Plaintiff,

- against -

COSTCO WHOLESALE CORPORATION and NBTY,
INC.,

Defendants.

Case No. 3:15-cv-00709-CAB-RBB

PAIGE PETKEVICIUS, on behalf of herself and all others similarly situated,

Plaintiff,

- against -

NBTY, INC., NATURE'S BOUNTY, INC.,
REXALL SUNDOWN, INC., and DOES 1-100,

Defendants.

Case No. 3:14-cv-02616-CAB-RBB

CONFIDENTIAL

30(b)(6) VIDEOTAPED DEPOSITION of SUSAN
HAZELS MITMESSER, taken at 2100 Smithtown
Avenue, Ronkonkoma, New York, commencing
at 9:18 a.m., Wednesday, October 19, 2016,
before Josephine Winter, Certified
Shorthand Reporter and a Notary Public of
the State of New York.

JOB NO. 2462046

PAGES 1 - 250

1 A P P E A R A N C E S :

2
3 ATTORNEYS FOR PLAINTIFF TATIANA KOROLSHTEYN, ON
4 BEHALF OF HERSELF AND ALL OTHERS SIMILARLY SITUATED

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19 CHRISTINE McINERNEY, ESQ.
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21 Ronkonkoma, New York 11779
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23
24 ALSO PRESENT:

25 PETER COOPER, Videographer

1 file that NBTY maintains?

2 A Yes.

3 Q Okay.

4 Before you asked somebody to
5 print that all out, had you ever looked at
6 the Ginkgo biloba file or any part of it
7 before?

8 A Yes.

9 Q When was that?

10 A I don't recall. I look at all
11 the files at periodic times in our
12 database. I don't recall a date as to
13 when the last time I looked at the file.

14 Q You say you look at the files at
15 periodic times? Is that what you said?

16 A Yeah, periodically I look at the
17 files.

18 Q Okay.

19 Is there a method or a process
20 by which you decide which files to
21 periodically look at?

22 A There's no cadence.

23 Q Cadence?

24 A Correct.

25 Q So how do you decide what files

1 idiopathic cognitive impairment, how does
2 this study in any way relate to the
3 purported support defendants claim with
4 their Ginkgo biloba products?

5 A Because it's the -- it's a
6 120-milligram dose of the standardized
7 material in a stressed population as you
8 put idiopathic cognitive impairment
9 showing improvement in different aspects
10 of cognitive test batteries.

11 Q And I don't know whether I asked
12 this:

13 Do you consider this study to be
14 a competent, high-quality, reliable study
15 sufficient to rely upon to reach
16 conclusions about taking defendants'
17 Ginkgo biloba in healthy subjects?

18 A I think it adds to the totality
19 of the data when we make a decision about
20 making a claim.

21 Q Okay.

22 Okay.

23 By the way, you don't know how
24 defendant or defendants arrived at their
25 decision to make the claims they make

1 about Ginkgo biloba; do you?

2 A Can you rephrase the question?

3 Q Sure.

4 You don't know what defendants
5 relied upon when they originally made the
6 claims they make about Ginkgo biloba now?

7 A Originally I would -- I agree
8 with the statement because of the word
9 originally, but understand that we
10 reassess claims all the time and so we --
11 whenever new scientific information comes
12 out, we reassess the claim, so while
13 originally I can't say for certain because
14 I was not part of the organization, but
15 subsequently I can say for certain.

16 Q Do you reassess the claims about
17 Ginkgo biloba while you were employed by
18 defendants?

19 A We reassess claims in our
20 portfolio on a very regular basis.

21 Q Okay, but my -- I understand
22 that is a general proposition.

23 My question is as you sit here
24 today, do you recall since you've joined
25 defendants whether or not you have

1 reassessed or even assessed the claims
2 about Ginkgo biloba before this
3 litigation?

4 A Yes.

5 Q When?

6 A When the NTP report came out.

7 Q Okay.

8 That's the toxicity report;
9 correct?

10 A Yes, it is.

11 Q All right.

12 Does it have anything to do with
13 the claims that are made about Ginkgo
14 biloba as opposed to safety?

15 A That report, no. Has to do with
16 safety, but at that --

17 Q Go ahead.

18 A -- at that given time because
19 that safety report was out we assessed the
20 claims.

21 Q So when you say we, you and who
22 else?

23 A My team.

24 Q Okay.

25 Who else on your team?

1 A I mentioned all seven of them.
2 I can't recall exactly who was involved in
3 the conversation, but we -- actually, it
4 was probably Lindsey, just thinking about
5 the dates. It was probably Lindsey.

6 Q Lindsey who?

7 A Schlohoock.

8 Q Okay.

9 And, again, when was this?

10 A I don't recall the date the NTP
11 report came out.

12 Q It was within the last four
13 years?

14 A Yes.

15 Q Okay.

16 And, again, these were just
17 discussions? There was no written
18 memorandum or anything as a result of
19 these discussions?

20 A Correct.

21 Q How much time did you spend on
22 reassessing the claims the defendants made
23 about their Ginkgo biloba products?

24 A I don't recall.

25 Q More than a couple of hours?

1 it.

2 Q Are you ready?

3 A Yes, I am.

4 Q I show you what's been marked as
5 Exhibit 30 which is a meta-analysis
6 authored by Laws et. al entitled, quote,
7 Is Ginkgo Biloba a Cognizant Enhancer in
8 Healthy Individuals? A Meta-Analysis.

9 Can you tell us why you did not
10 cite this article as part of your 16
11 articles?

12 A So, again, I have reviewed this
13 and the way these authors were looking at
14 this review, which it's a review, was as
15 an enhancer of cognitive function, so
16 that's not necessarily something that
17 we're going after, is to enhance
18 something, but more pointedly it is a
19 review article.

20 Q What's the matter with a review
21 article?

22 A Well, we would never base a
23 claim solely on a review article.

24 Q I didn't ask you whether you
25 would -- that's the problem? That you

1 CERTIFICATION BY REPORTER

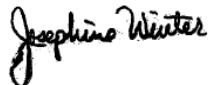
2 I, Josephine Winter, a Notary Public
3 of the State of New York, do hereby
4 certify:

5 That the testimony in the within
6 proceeding was held before me at the
7 aforesaid time and place;

8 That said witness was duly sworn
9 before the commencement of the testimony,
10 and that the testimony was taken
11 stenographically by me, then transcribed
12 under my supervision, and that the within
13 transcript is a true record of the
14 testimony of said witness.

15 I further certify that I am not
16 related to any of the parties to this
17 action by blood or marriage, that I am not
18 interested directly or indirectly in the
19 matter in controversy, nor am I in the
20 employ of any of the counsel.

21 IN WITNESS WHEREOF, I have hereunto
22 set my hand this 24th day of October, 2016.

23
24 

25 Josephine Winter

INSTRUCTIONS FOR READING/CORRECTING YOUR DEPOSITION

To assist you in making corrections to your deposition testimony, please follow the directions below. If additional pages are necessary, please furnish them and attach the pages to the back of the errata sheet.

This is the final version of your deposition transcript.

Please read it carefully. If you find any errors or changes you wish to make, insert the corrections on the errata sheet beside the page and line numbers.

If you are in possession of the original transcript, do NOT make any changes directly on the transcript.

Do NOT change any of the questions.

After completing your review, please sign the last page of the errata sheet, above the designated "Signature" line.

ERRATA SHEET

Page Line

30 24 Change: so to some

Reason: captured incorrectly

39 3 Change: It to I

Reason: captured incorrectly

46 6 Change: cognizant to cognition

Reason: captured incorrectly

187 23 Change: cognizant to cognition

Reason: captured incorrectly

X Subject to the above changes, I certify that the transcript is true and correct.

_____ No changes have been made. I certify that the transcript is true and correct.

 28 November 2016